

STATE OF SOUTH DAKOTA  
CONSULTING CONTRACT

# 11-2900-056

AGREEMENT made and entered into this 8<sup>th</sup> day of December, 2010, by and between the Office of Attorney General, a state agency, of 1302 East Highway 14, Pierre South Dakota 57501 (the "State") and Factor 360, Inc., 120 North Euclid Ave., Pierre South Dakota 57501 (the "Consultant").

The State hereby enters into this Agreement for services with Factor 360, Inc in consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant will perform those services to modify an existing software program Consultant previously developed for the State as described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

2. The Consultant's services under this Agreement shall commence on January 1, 2011 and end on June 30, 2011, unless sooner terminated pursuant to the terms hereof.

3. The Consultant will not use State equipment, supplies or facilities. The Consultant will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement. #12052376

4. The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$15,950. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26.

5. The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

Freeman 12.20.10  
Ryckman 12.20.10

The Consultant agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$N/A.

C. Business Automobile Liability Insurance:

The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$200,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

7. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

9. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then

the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

10. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

11. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

14. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

15. Consultant warrants that the software developed or purchased under this Agreement will be in compliance with the BIT Standards for security, file naming conventions, executable module names, Job Control Language, systems software version and release levels, temporary work areas, executable program size, forms management, network access, tape management and job stream procedures prior to the installation and acceptance of the final project. BIT hardware and software standards can be found at <http://www.state.sd.us/bit/bitservices/standards/>.

16. Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Consultant in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Consultant without the

written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

Consultant hereby agrees to provide State for safekeeping, a copy of source code for any system that is developed or maintained by the Consultant. The source code provided will be the latest version that currently runs in a production environment.

This section is not intended to cover pre-existing software and other materials developed or otherwise obtained by or for Consultant or its affiliates independently of this Agreement. Software tools and toolkits known as "ReportLab", "ZToolkit", "Python ZToolkit", and "CherryPy" are preexisting and as such are not covered under section 18 of this Agreement. Nothing in this section will be construed to interfere with Consultant's or its affiliates' ownership of these pre-existing materials.

The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Agreement by the Consultant or jointly by the Consultant and the Agency, may be used by either party without obligation of notice or accounting.

17. The Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

18. Consultant agrees to comply with the Confidentiality Provision attached hereto as Exhibit B and by this reference incorporated herein.


19. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Jamie Freestone on behalf of the State, and by Dennis Ryckman, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

20. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

21. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.


In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

BY:   
Marty Jackley  
Attorney General, South Dakota  
Office of the Attorney General

\_\_\_\_\_  
(DATE)

CONSULTANT

BY:   
Dennis Ryckman  
Factor 360  
President

12-8-2010  
(DATE)

- Kay McLain (605) 773-3215 can provide additional information regarding this contract.
- This will be paid from the Smart Grant ✓

EXHIBIT A

STATE OF SOUTH DAKOTA  
CONSULTING CONTRACT  
FACTOR 360, INC.

# **Sex Offender Registry SigPad Upgrade and Miscellaneous Updates**

Version 1.2

12/7/2010

Prepared by: Kevin Freestone

Prepared for: South Dakota Attorney General's Office  
Division of Criminal Investigation

## **Project Estimate**

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### **Introduction**

The Sex Offender Registry (SOR) form currently requires fingerprint signatures from each offender. The fingerprint scans are causing problems when trying to compare an earlier fingerprint signature to one scanned for a new registration. The solution to this problem is for the county officials to manually (visually) compare the offender's signature upon re-registration to a signature currently stored in the database. This will be accomplished using a signature pad instead of a fingerprint scanner.

Additional updates to the system will include:

- Search Driver Licensing photos for non-compliant offenders
- Change the national upload
- Add sex offender list to neighborhood search page
- Add public export to public search pages. All results will be exportable (tab-delimited)
- Delete unused reports
- Add offenses via new admin tool
- Statute link administration
- Report for offenders who have not sent the address verification letter back
- Fix out of date photos report

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## Services Offered

Here is a detailed list of the functionality that will be added to the SOR System:

- Admin
  - Offenders will sign the forms using a signature pad instead of the fingerprint scanner
    - Disclaimer will be displayed by offender signature
  - An additional signature will be added for the witness by registering agency
  - All signature boxes will be displayed on all forms where the signature would normally be displayed (input forms, printable forms, exportable forms)
  - All signature images will be uploaded to server and not saved locally to agency machines
  - A report will be added to search the driver licensing database for non-compliant offenders. This report will display results similar to the GFP licensing database search.
    - Only non-compliant offenders will be searched
    - Comparison based on first name, last name, and date of birth
    - Fields displayed:
      - Full name
      - Full Address
      - Full secondary address
      - DL Issue date
      - DL#
    - BIT will create an additional web service to retrieve the additional fields.
  - The file that is uploaded to the national SOR system will be changed to reflect the latest technologies. The information required to accomplish this will be gathered from the national agency.
  - Delete reports: Crime description forms submitted, duty to register forms submitted, and non-compliance address verification letter
  - Administration section for offenses and statutes
    - Add/Update/Archive offenses
    - Add/Update/Archive statutes
    - Statutes will no longer be linking to LRC site
    - Offenses with code need to show on printable forms and be linked on input forms (pop-up on click)
  - Add Report to display offenders who have not sent in the address verification letter
    - Query by date letters are sent
    - Search by letters that have a blank "signed letter" field
    - Results will include name, address, mailing address, registering agency
    - Name should link to active record (displayed in popup)
    - Add link on results page to insert date when email was sent to registering agency
    - Add email sent field to registration form next to signed letter field (functions same as signed letter field)
    - Keep audit log for email sent (same as signed letter field)
    - Results grouped by registering agency

- Fix out of date photos report not pulling right offenders in the right counties
- Public
  - Offender list (corresponding to map dots) will be displayed on the neighborhood search results page
  - All search results will be exportable in tab-delimited format
  - Offenses need to be linked with statute when viewing a record

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## **Fees and Service Terms**

The cost breakdown for this implementation based on the following phases:

- Phase I - Signature Pads
  - Phase II – Statute Link/Offenses Administration
  - Phase III – DL Lookup for Non-compliant offenders
  - Phase IV
    - Delete unneeded reports
    - Address verification letter not sent report
    - Out of date photos report fix
    - Changes to public site
  - Phase V – National Upload changes
1. Requirements and Development: \$12,000
  2. Testing: \$1,500
  3. Implementation (Production): \$1,000
  4. Maintenance Agreement Adjustment: \$1,450

Total Quote: \$15,950

Note that this is only an estimate and costs may change depending on changed requirements and issues that arise which are beyond Factor 360's control.

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## **Work Plan**

### **Phase I**

1. Initial Development and internal testing (5 weeks)
2. DCI Testing (2 weeks)
3. Implementation (2 days)

### **Phase II**

1. Initial Development and internal testing (4 weeks)
2. DCI Testing (1 week)
3. Implementation (2 days)

### **Phase III**

1. Initial Development and internal testing (2 weeks)
2. DCI Testing (3 days)
3. Implementation (1 day)

### **Phase IV**

1. Initial Development and internal testing (5 weeks)
2. DCI Testing (1 week)
3. Implementation (2 days)

### **Phase V**

1. Initial Development and internal testing (1 week)
2. DCI Testing (3 days)
3. Implementation (1 day)

## EXHIBIT B

### STATE OF SOUTH DAKOTA CONSULTING CONTRACT FACTOR 360, INC.

#### CONFIDENTIALITY PROVISION

1. In order for Consultant to perform the computer programming services contemplated under the Agreement, Consultant may require access to confidential information.
2. Consultant acknowledges the State's need to keep confidential information it maintains, that is subject to various confidentiality statutes and legal privileges held by the State as well as other agencies, state agency clients, in-state and out-of-state government entities, and third parties.
3. Consultant agrees in order to protect the confidentiality and legal privileges associated with State computer usage and data storage that it and all of its officers, agents, and employees:
  - a. Will not, at any time, either directly or indirectly, make public, reveal, or communicate to any person, firm, or corporation or public entity, in any manner whatsoever, any information concerning any matters affecting or relating to confidential records or data that may be obtained in the course of performing this Agreement.
  - b. Will not reproduce or transfer in any way or manner or share with any person except as specifically authorized by the State any confidential data or information provided by the State.
  - c. Will not read, review, monitor, access, or attempt entry or other accession, of any data, documents, records, files (private or public), databases, communications, research trails, cookies, hard drives, servers, back up tapes or other back up mechanisms or facilities, on any State computer.
4. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant agrees that its officers, agents and employees may be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.
5. Consultant will enforce the terms of this Confidentiality Provision to its fullest extent. Consultant agrees that remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision
6. Violation of this Confidentiality Provision is cause for immediate termination of this Agreement and could subject any violator to criminal prosecution in accordance with state law.
7. Neither this Confidentiality Provision, nor any part thereof, shall establish any privacy rights to, for or on the part of, any employee of the Consultant or State or waive any remedies against any such person for illegal, improper, or unauthorized use of the computers or any computer system or portion thereof.

STATE OF SOUTH DAKOTA



**OFFICE OF ATTORNEY  
GENERAL**

1302 E. Highway 14, Suite 1  
Pierre, South Dakota 57501-5070  
Phone (605) 773-3215  
FAX (605) 773-4106  
[www.state.sd.us/attorney](http://www.state.sd.us/attorney)

**MARTY JACKLEY**  
ATTORNEY GENERAL

**CHARLIE MCGUIGAN**  
CHIEF DEPUTY ATTORNEY  
GENERAL

December 8, 2010

Richard Sattgast  
State Auditor  
500 East Capitol  
Pierre, SD 57501

Re: Consulting Contract – Factor 360, Inc.

Dear State Auditor Sattgast:

Attached herewith is a Consulting Contract between the Office of Attorney General and Factor 360, Inc. dated December 8, 2010. This letter is to advise you that this is a contract for consulting and is in an amount of less than \$50,000.00. The contract is to modify a software program Factor 360, Inc. previously developed as is therefore the only practical source to provide the service. As such, the RFP provisions set forth in SDCL 5-18-55 thru 62 are not applicable.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jamie Freestone".

Jamie Freestone  
Information Technology Team Leader

JF/rar  
Enclosures